STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v CORINNE MICHELLE MELTON, Defendant-Appellant.	FOR PUBLICATION July 20, 2006 9:05 a.m. No. 257036 Tuscola Circuit Court LC No. 03-008812-FH Official Reported Version

Before: Davis, P.J., and Neff, Fitzgerald, Saad, Bandstra, Markey, and Murray, JJ.

DAVIS, P.J.

Pursuant to MCR 7.215(J), this Court convened a special panel to resolve a conflict between the prior, partially vacated opinion in this case, *People v Melton*, 269 Mich App 542; 711 NW2d 430 (2006), and *People v Knowles*, 256 Mich App 53; 662 NW2d 824 (2003). The relevant issue in both cases was the interpretation and application of MCL 777.39, which governs a sentencing trial court's scoring of offense variable (OV) 9. In accordance with MCR 7.215(J)(1), the prior *Melton* panel was required to follow the precedent set by *Knowles*. Absent this requirement, the prior panel would have reversed the sentencing decision of the trial court. We now overrule *Knowles*.

Under MCL 777.39(2)(a), the sentencing court must score points for "each person who was placed in danger of injury or loss of life as a victim." Specifically at issue here is whether OV 9 can only be scored when the victim is placed in danger of *physical* injury. The trial court scored OV 9 at ten points on the basis of a danger of *financial* injury. The prior *Melton* panel affirmed on the basis of *Knowles* and *People v Dewald*, 267 Mich App 365; 705 NW2d 167 (2005), both of which held that OV 9 should be scored for financial injuries. However, the panel opined that it would not do so if it was not required to do so by *Knowles* and *Dewald*. We now hold that a plain reading of MCL 777.39 requires OV 9 to be scored only when there is a danger of physical injury.

The facts are set forth with particularity in the prior case. *Melton*, *supra* at 544-545. In summary, defendant broke into the home of Mary Ann Elbers and her son, Jeffrey Elbers, while neither one was at home. Defendant stole six guns, money, and some other items belonging to each of the Elbers. A jury convicted defendant on six counts of larceny of a firearm and one

count each of first-degree home invasion, larceny in a building, and possession of a firearm during the commission of a felony. At sentencing, defendant argued that OV 9 should not be scored because no one was physically injured or even at home when she committed the crimes. The trial court scored ten points for OV 9, resulting in an overall OV score of 30, which placed defendant in OV level III of the sentencing grid. *Melton*, *supra* at 548-549. If OV 9 had not been scored, defendant would have been in OV level II. The trial court sentenced defendant to concurrent terms of ten to 25 years' imprisonment for the larceny of a firearm and home invasion convictions and ten to 15 years' imprisonment for the larceny in a building conviction, and to a consecutive two-year term for the felony-firearm conviction. Even if OV 9 had not been scored, defendant's sentences would still be within the appropriate guidelines range, but, as the prior *Melton* panel noted, a scoring error may still affect a defendant through such things as its effect on the calculation of parole eligibility. *Melton, supra* at 549-550.

We review de novo the interpretation of a statute, with the goal of giving effect to the intent of the Legislature. *People v Spann*, 250 Mich App 527, 529-530; 655 NW2d 251 (2002), aff'd 469 Mich 904 (2003). Clearly written language must be enforced, and "[n]othing will be read into a statute that is not within the manifest intention of the Legislature as gathered from the act itself." *Id*. at 530, 532. We may not engage in construction of clear statutory language, nor may we "speculate regarding the probable intent of the Legislature beyond the language expressed in the statute." *People v Hock Shop, Inc*, 261 Mich App 521, 524, 528; 681 NW2d 669 (2004). Judicial interpretation is only appropriate when a statute is susceptible to more than one interpretation, in which case "courts must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose." *People v Fennell*, 260 Mich App 261, 265; 677 NW2d 66 (2004). We perceive no such ambiguity here.

MCL 777.39 provides in full:

> (1) Offense variable 9 is number of victims. Score offense variable 9 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:
>
> (a) Multiple deaths occurred ……100 points
>
> (b) There were 10 or more victims ……25 points
>
> (c) There were 2 to 9 victims ……10 points
>
> (d) There were fewer than 2 victims ……..... 0 points
>
> (2) All of the following apply to scoring offense variable 9:
>
> (a) Count each person who was placed in danger of injury or loss of life as a victim.
>
> (b) Score 100 points only in homicide cases.

The Legislature did not explicitly restrict types of injuries by inserting the word "physical" anywhere in the statute. It is therefore superficially logical to conclude that no such restriction was intended, in which case OV 9 could be scored for financial injuries.

However, such an interpretation would also result in a conclusion that OV 9 should be scored for *any* sort of injury. We note there is no direction to score for "financial" injuries. Nor is there a direction to include "psychological" injuries or, perhaps, "social" injuries. Indeed, there is a veritable cornucopia of possible types of injuries one could conceivably suffer as a result of a criminal act. Concluding that OV 9 is not limited to physical injuries effectively mandates that a trial court score points whenever a purported victim is placed in danger of *anything* that could be considered harmful, whether to the victim's person, pocketbook, reputation, self-esteem, or dignity.

We do not believe that the Legislature intended such an open-ended application, especially when the word "injury" is viewed in the context of the rest of the statute. Our Supreme Court has explained that, in the absence of a clear indication that the Legislature intended us to do otherwise, this Court must examine the language of a statute in its grammatical and structural context. *People v Gillis*, 474 Mich 105, 114-115; 712 NW2d 419 (2006). The remainder of the statute clearly indicates that only physical injuries were contemplated.

Under MCL 777.39(2)(a), scoring should "[c]ount each person who was placed in danger of injury or loss of life as a victim." The statute further directs that the maximum number of points should be scored only in homicide cases in which "[m]ultiple deaths occurred." MCL 777.39(1)(a) and (2)(b). The only kind of "injury" that can plausibly be juxtapositioned with "loss of life" is physical injury to one's person. We cannot conclude that the Legislature intended to categorize financial loss with the same gravity as physical injury and death.

The Legislature has mandated that OV 9 should be scored for all crimes against a person, property, public order, public trust, or public safety. MCL 777.22. However, this simply means that the Legislature intended a sentencing court to score OV 9 for any property crime that happens to result in the additional risk of physical injury. Certainly, this constitutes a directive to *consider* whether there has been a risk of physical injury, even when imposing sentences for a category of crimes unlikely to pose such a risk. However, if no risk of physical injury was posed, OV 9 will be scored at zero points, as permitted by MCL 777.39(1)(d). We see no way to interpret MCL 777.22 as an expression of the Legislature's intent to score OV 9 for financial injuries or, as discussed, any other kinds of injuries. Rather, it appears that the Legislature was sufficiently concerned about physical injuries that it wished sentencing courts to take them into account no matter what kind of underlying crime was committed.

Finally, we agree with the dissent that OV 16 measures the aggregate amount of property damage, rather than the number of victims who sustained property damage. However, we do not see any significance to this, and we agree with the original *Melton* panel's conclusion that OV 16 already accounts for financial injuries. There is nothing irrational about the Legislature concluding that property damage is best measured by placing on it an aggregate dollar value or, in the alternative, accounting for the property's sentimental value, while simultaneously

concluding in a separate context that the best way to quantify physical risk is by counting the number of people exposed to that risk. It is axiomatic that human lives carry a very different value from that of property or money.

Because defendant's sentences were within the appropriate guidelines range in any event, we do not disturb them. However, the trial court should not have scored OV 9 at ten points here because no one was placed in danger of physical injury. We therefore reverse the trial court's scoring of OV 9 and remand for correction of defendant's guidelines score.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

Fitzgerald and Markey, JJ., concurred with Davis, P.J.